

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

SURFACESUPPLIED INC.,

No. C-13-0575 MMC

Plaintiff,

v.

**ORDER DENYING WITHOUT
PREJUDICE PLAINTIFF'S COUNTER-
MOTION FOR JUDGMENT ON THE
PLEADINGS**

KIRBY MORGAN DIVE SYSTEMS, INC.,

Defendant.

/

Before the Court is plaintiff's "Counter-Motion for Judgment on the Pleadings and in Opposition to [Defendant's] Motion to Amend Scheduling Order and for Leave to File First Amended Counterclaims," filed October 11, 2013 and noticed for hearing on November 1, 2013.

Under the Civil Local Rules of this district, a motion for judgment on the pleadings "must be filed, served and noticed in writing on the motion calendar of the assigned Judge for hearing no less than 35 days after service of the motion." Civil L.R. 7-2(a). Here, plaintiff has noticed its counter-motion for hearing on a date only 21 days after service. Moreover, because a plaintiff may move for judgment on the pleadings only "[a]fter the pleadings are closed," see Fed. R. Civ. P. 12(c), and defendant, by its Motion for Leave to File First Amended Counterclaims, is seeking to reopen the pleadings, the Court's consideration of plaintiff's motion would be premature at this time.

1 Accordingly, plaintiff's Counter-Motion for Judgment on the Pleadings is hereby
2 DENIED without prejudice to plaintiff's refiling said motion if the Court denies defendant's
3 motion for leave to amend.

4 **IT IS SO ORDERED.**

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6 Dated: October 21, 2013
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MAXINE M. CHESNEY
United States District Judge